LIFE PARADISE SDN BHD v. EXPORT-IMPORT BANK OF MALAYSIA BHD & ANOR AND ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
LAU BEE LAN JCA
RAVINTHRAN PARAMAGURU JCA
MOHD SOFIAN ABD RAZAK JCA
[CIVIL APPEAL NOS: N-01(NCVC)(A)-646-11-2019
& W-02(NCVC)(A)-2115-11-2019
27 DECEMBER 2021

Abstract – *When it is established that titles to lands have been deposited by the proprietor to provide security for loans, even if it is for the purpose of a third party, the bank, as the entity that is entitled to receive security, is clearly entitled to apply for the entry of a lienholder's caveat on the lands in question. The act of depositing the titles in relation to a loan triggers the operation of ss. 281(1) and 330(1) of the National Land Code.*

LAND LAW: *Lien – Deposit of title deeds – Whether to provide security for loans granted to third party – Whether bank entitled to apply for entry of lienholder's caveat on lands – Whether proprietor must expressly consent to creation of lien – Whether bank had right to enter lien holder's caveat without approval of proprietor – Whether pre-conditions for creation of statutory lien satisfied – National Land Code, ss. 281, 330(1)*

LAND LAW: *Malay reservations – Malay holdings – Whether s. 10 of Malay Reservations Enactment (FMS Cap 142) ('Enactment') prohibited lienholder's caveats as lands are Malay Holdings – Whether ss. 10 and 17 of Enactment should be read together with relevant provisions of National Land Code relating to creation of lien – Whether lienholder's caveat part and parcel of statutory lien under National Land Code*

The appellant was the registered owner of eight parcels of land in Rembau, Negeri Sembilan. The respondent had granted financing facility for a sum of USD 4,000,000 *via* a term loan facility agreement in 2004 to a third party, namely, PT Eden Capital Indonesia, a company incorporated in the Republic of Indonesia. As part of the securities for the said loan, the appellant deposited with the respondent the title to each of the eight parcels of land in question. A third party charge was also executed by the appellant in favour of the respondent over the same lands. The respondent then entered a lienholder's caveat in respect of the eight parcels of land. PTE Eden Capital Indonesia defaulted in repaying the loan facility and the respondent entered judgment against it. Subsequently, the third party charges executed in favour

of the respondent was declared to be null and void by the High Court Seremban. However, the lienholder's caveats in respect of the eight parcels of land that were entered by the respondent were not set aside. The respondent proceeded to apply at the High Court Kuala Lumpur for an order for sale of the said lands under s. 281 of the National Land Code ('NLC'). Before the originating summons of the respondent for sale of the lands was heard, the appellant filed an originating summons at the High Court Seremban to declare the lien-holder's caveats null and void. The High Court Seremban dismissed the originating summons of the appellant. Several days later, the High Court Kuala Lumpur allowed the originating summons of the respondent for an order for sale of the said lands. Hence, two appeals arose. In Appeal N-01(NCVC)(A)-646-11-2019, the appellant appealed against the decision of the High Court Seremban dismissing its originating summons to nullify the lienholder caveats entered by the first respondent. In Appeal W-02(NCVC)(A)-2115-11-2019, the appellant appealed against the decision of the High Court Kuala Lumpur which granted the respondent's originating summons for an order for sale. These two appeals were heard together as they involved the same parties and were related. The issues that arose were (i) whether the respondent had the right to enter the lienholder's caveat under s. 281(1) of the NLC without the approval of the appellant; and (ii) whether s. 10 of the Malay Reservations Enactment (FMS Cap 142) ('the Enactment') prohibited the lienholder's caveats as the lands were 'Malay holding' under the said Enactment.

Held (dismissing appeals)
Per Ravinthran Paramaguru delivering the judgment of the court:

(1) The titles to the lands in question were deposited by the appellant to provide security for the loans granted to the third party by the appellant. In the premises, the respondent was clearly entitled to apply for the entry of a lienholder's caveat on the lands in question. The right of the respondent to a lienholder's caveat by virtue of the deposit of the titles is stated in s. 330(1) of the NLC. There is no serious dispute that the titles were deposited for some reason other than providing security for the loans granted to the third party by the appellant. It was also unarguable that the appellant was the owner of the lands and that the respondent was the entity that was entitled to receive security. The registration of a lien that is created under s. 281 is exempted under s. 206 of the NLC. Therefore, all the pre-conditions for the creation of the statutory lien in s. 281 were satisfied in this case. (paras 11 & 12)

(2) Section 281 does not say that the proprietor must expressly consent to the creation of a lien. All it says is that the proprietor or lessee must deposit the title 'as security'. The essential pre-condition is the intention of the proprietor in depositing the title which must be for the purpose

of securing a loan and for no other reason. And the intention of the proprietor could be ascertained from all the circumstances of the case. The deposit of the titles by the appellant was connected to the loan facility granted to PT Eden Capital Malaysia. The deposit of the titles was related to the loan in question. The act of depositing the titles in relation to a loan would trigger the operation of ss. 281(1) and 330(1) of the NLC. As the intention of the appellant in depositing the titles was undoubtedly to secure the loan in question, even if it was for the purpose of third party charges, the respondent was entitled to a lien. (paras 13-16)

(3) The lands in question were 'Malay holding' under the Enactment. If read in isolation, s. 10 appeared to prohibit a lien from being created over any 'Malay holding'. However, s. 17 provides an exception. The opening words of s. 17 are 'Notwithstanding any of the provisions in this Enactment'. Thus, s. 17 in clear language has overridden the prohibition in s. 10 against the creations of lien over 'Malay holding' for entities that are listed in the Second Schedule. The respondent was listed in the Second Schedule (as applicable to Negeri Sembilan) at the time that the lien holder's caveats were entered. Sections 10 and 17 should be read together with the relevant provisions of the NLC relating to the creation of a lien. Otherwise, the intention of the Legislature in permitting the creation of lien by specified entities over Malay holding would be frustrated. (paras 21 & 23)

(4) A statutory lien is created only upon the entry of a lienholder's caveat under s. 281(1)(b) of the NLC. And s. 330(1) of the NLC entitles a person with whom a title is deposited for security to apply to enter a lienholder's caveat under s. 281. It followed that since s. 17 permits creation of a statutory lien by the entities listed under the Second Schedule, the entry of a lienholder's caveat to create the said lien is also not barred. The exemption provided in s. 17 would be completely unworkable if the prohibition against the entry of a lien holder's caveat in s. 10 is read independently. The prohibition in s. 10 against the entry of a caveat is only ancillary to the prohibition against the creation of a lien which is the primary object of the exemption. It is not a separate prohibition. There was thus no merit in the argument that s. 17 does not apply to a lienholder's caveat. A lienholder's caveat is part and parcel of a statutory lien under the NLC. (para 23)

(5) In opposing the respondent's originating summons for an order for sale of the lands in question, the appellant had canvassed the same issues that were addressed earlier in the appeal against the dismissal of the originating summons to nullify the liens in question. Since all the said issues were without merit, it followed that the appeal against the order for sale granted by the High Court Kuala Lumpur must also be dismissed. (para 27)

Case(s) referred to:
Paramoo v. Zeno [1968] 1 LNS 95 FC ***(refd)***
Perwira Affin Bank Bhd v. Selangor Properties Sdn Bhd & Ors [2010] 3 CLJ 45 CA ***(refd)***
Perwira Habib Bank (M) Bhd v. Tin Siang Sdn Bhd & Ors [1992] 4 CLJ 1875; [1992] 3 CLJ (Rep) 265 HC ***(refd)***

Legislation referred to:
Malay Reservations Enactment (FMS Cap 142), ss. 10, 17
National Land Code, ss. 206, 281(1)(b), 330(1)

(Civil No: N-01(NCVC)(A)-646-11-2019)
For the appellant - Adnan Seman; M/s Adnan Sharida & Assocs
For the respondent - Trevor Padasian & Ryan Wan Ismail Jaafar; M/s Skrine

(Civil No: W-02(NCVC)(A)-211-11-2019)
For the appellant - Adnan Seman; M/s Adnan Sharida & Assocs
For the respondent - Trevor Padasian & Ryan Wan Ismail Jaafar; M/s Skrine

[Editor's note: Appeal from High Court, Seremban; Originating Summons No: NA-24NCVC-164-05-2019 (affirmed).]

Reported by Suhainah Wahiduddin

JUDGMENT

Ravinthran Paramaguru JCA:

Introduction

[1] The two appeals before us were heard together for sake of convenience as they involve the same parties and are related. This judgment is in respect of both appeals. The appellant in both appeals is Life Paradise Sdn Bhd. In Appeal N-01(NCVC)(A)-646-11-2019, it has appealed against the decision of the High Court sitting in Seremban which dismissed its originating summons to nullify the lienholder caveats entered by the Export-Import Bank of Malaysia which was first respondent. As the second respondent, ie, the Pengarah Tanah Dan Galian was a nominal party, we shall refer to the Export Import Bank of Malaysia as the respondent in this judgment. In Appeal W-02(NCVC)(A)-2115-11-2019, Life Paradise Sdn Bhd has appealed against the decision of the High Court sitting in Kuala Lumpur which granted the respondent's originating summons for an order for sale.

Background Facts

[2] The appellant is the registered owner of eight parcels of land in Rembau, Negeri Sembilan. The respondent had granted financing facility for a sum of USD4,000,000 *via* a term loan facility agreement in 2004 to a third party, namely, PT Eden Capital Indonesia which is a company incorporated in the Republic of Indonesia. As part of the securities for the said loan, the appellant deposited with the plaintiff the title to each of the eight parcels of land in question, namely:

A
1. State Lease 31931, Lot 4512, Mukim Titian Bintangor, Daerah Rembau, Negeri Sembilan;

2. State Lease 31935, Lot 4516, Mukim Titian Bintangor, Daerah Rembau, Negeri Sembilan;

B
3. State Lease 31936, Lot 4517, Mukim Titian Bintangor, Daerah Rembau, Negeri Sembilan;

4. State Lease 31931, Lot 4512, Mukim Titian Bintangor, Daerah Rembau, Negeri Sembilan;

C
5. State Lease 31938, Lot 4519, Mukim Titian Bintangor, Daerah Rembau, Negeri Sembilan;

6. State Lease 31940, Lot 4521, Mukim Titian Bintangor, Daerah Rembau, Negeri Sembilan;

7. State Lease 31941, Lot 4523, Mukim Titian Bintangor, Daerah Rembau, Negeri Sembilan; and

D
8. State Lease 31943, Lot 4527, Mukim Titian Bintangor, Daerah Rembau, Negeri Sembilan.

[3] A third party charge was also executed by the appellant in favour of the respondent on 20 July 2005 over the same lands. On 6 February 2013 and 24 July 2017, the respondent entered a lienholder's caveat in respect of
E the eight parcels of land.

[4] PT Eden Capital Indonesia defaulted in repaying the loan facility and the respondent entered judgment against it on 19 May 2019. As at 25 June 2019, the total sum that remained unpaid was USD6,517,745.70. On
F 20 December 2016, the third party charges executed in favour of the respondent was declared to be null and void by the High Court sitting in Seremban.

[5] However, the lienholder's caveats in respect of the eight parcels of land that were entered by the respondent were not set aside. On 9 April 2019,
G the respondent proceeded to apply at the High Court sitting in Kuala Lumpur for an order for sale of the said lands under s. 281 of the National Land Code which reads as follows:

Section 281

H
(1) Any proprietor or lessee for the time being may deposit with any other person or body, as security, his issue document of title or, as the case may be, duplicate lease; and that person or body:

(a) may thereupon apply under Chapter 1 of Part Nineteen for the entry of a lienholder's caveat; and

(b) shall, upon the entry of such a caveat, become entitled to a lien over
I the land or lease.

(2) Where the holder of any lien has obtained judgment for the amount due to him thereunder, he shall be entitled to apply to the Court for, and obtain forthwith, an order for the sale of the land or lease.

[6] Before the originating summons of the respondent for sale of the lands was heard, the appellant filed an originating summons at the High Court sitting in Seremban to declare the lienholder's caveats null and void. The prayers sought in the appellant's originating summons are as follows:

(a) A declaration that the Lienholder's Caveats are null and void;

(b) That the 2nd Defendant cancel the registration of the Lienholder's Caveats; and

(c) That respondent returns the Issue Documents of Title to the Plaintiff.

[7] On 15 October 2019, the High Court sitting in Seremban dismissed the originating summons of the appellant with costs. Three days later on 18 October 2019, the High Court sitting in Kuala Lumpur allowed the originating summons of the respondent for an order for sale of the said lands. We shall first deal with the appeal against the decision of the High Court in Seremban to dismiss the originating summons of appellant to nullify the lienholder's caveats.

Appeal Against Dismissal Of Originating Summons To Nullify Lien-Holder's Caveats

[8] Before the High Court, the main issue argued by the appellant was that the facilities agreement did not permit the respondent to register a lienholder's caveat and apply for an order for sale. The other issue was that they were not aware of the lienholder's caveat until the application to sell the lands were made. The High Court found that the respondent has a statutory right to enter the lienholder's caveat under s. 281(1) of the NLC. The High Court also found that the respondent comes within the exception in s. 17 of the Malay Reservations Enactment (F.M.S. Cap. 142) (As applicable to Negeri Sembilan) and therefore the lienholder caveats were valid although the lands in question are "Malay holding" and come within the ambit of the said Enactment. In respect of the alleged lack of knowledge of the appellant about the lienholder's caveat, the High Court found that the appellant was not truthful. His Lordship also held that the very act of depositing of the titles showed that the appellant had intention that they be used as third party collateral.

Issues

[9] The appellant pursued two main issues in this appeal. The first issue was the right of the respondent to enter the lienholder's caveat under s. 281(1) of the NLC without the approval of the appellant. The second issue

was whether s. 10 of the Malay Reservations Enactment (F.M.S. Cap. 142) prohibited the lienholder's caveats as the lands are "Malay holding" under the said Enactment.

Lienholder's Caveat Under Section 281(1)

[10] Section 281 of the NLC reads as follows:

> (1) Any proprietor or lessee for the time being may deposit with any other person or body, as security, his issue document of title or, as the case may be, duplicate lease; and that person or body:
>
> (a) may thereupon apply under Chapter 1 of Part Nineteen for the entry of a lienholder's caveat; and
>
> (b) shall, upon the entry of such a caveat, become entitled to a lien over the land or lease.
>
> (2) Where the holder of any lien has obtained judgment for the amount due to him thereunder, he shall be entitled to apply to the Court for, and obtain forthwith, an order for the sale of the land or lease.

[11] In the instant case, the affidavit evidence established the titles to the lands in question were deposited by the appellant to provide security for the loans granted to the third party by the appellant. In the premises, the respondent was clearly entitled to apply for the entry of a lienholder's caveat on the lands in question. The right of the respondent to a lienholder's caveat by virtue of the deposit of the titles is stated in s. 330(1) of the NLC which reads as follows:

> Section 330(1)
>
> (1) Any person or body with whom the issue document of title to any land, or any duplicate lease, has been deposited as security may, as provided in s. 281, apply to the Registrar under this section for the entry of a lienholder's caveat in respect of the land or lease in question.

[12] In the instant case, as we pointed out earlier, there is no serious dispute that the titles were deposited for some reason other than providing security for the loans granted to the third party by the appellant. It is also unarguable that the appellant is the owner of the lands and that the respondent is the entity that is entitled to receive security. We would also note as submitted by counsel for respondent that registration of a lien that is created under s. 281 is exempted under s. 206 of the NLC. In the premises, all the pre-conditions for the creation of the statutory lien in s. 281 were satisfied in this case.

[13] Counsel for the appellant seriously pursued the ground that the appellant did not give consent to the creation of the statutory lien. We find no merit in this ground of appeal for the following reasons. Section 281 does

not say that the proprietor must expressly consent to the creation of a lien. All it says is that the proprietor or lessee must deposit the title "as security". The authoritative cases on this issue say that the essential pre-condition is the intention of the proprietor in depositing the title which must be for the purpose of securing a loan and for no other reason. And the intention of the proprietor can be ascertained from all the circumstances of the case.

[14] In *Perwira Habib Bank (M) Bhd v. Tin Siang Sdn Bhd & Ors* [1992] 4 CLJ 1875; [1992] 3 CLJ (Rep) 265, it was argued on behalf of the proprietor that there was no agreement between the parties that a lien holder's caveat be entered by the lender. However, it was established that the purpose of the deposit of the title was to secure a loan. In granting the order for sale, Zakaria Yatim J said as follows:

> In order to establish a Torrens lien or statutory lien, the onus is on the plaintiff-depositee to prove that the deposit was made on the advance of money; he, as the financier or lender, must connect the advance with the deposit. Such holder or lender must prove the true intention of the proprietor when the title was deposited by the proprietor with him. In other words, the holder must show that the deposit was made as security for a loan advanced by the holder to the depositor-proprietor. If a deposit is for any reason other than 'as security for a loan' the act of deposit cannot be construed as being connected with a loan or advance and therefore no valid lien could, under the circumstances, be validly created under s. 281(1).
>
> (See S.Y. Kok, The nature and application of the *Torren's Liens and Lien-Holders' Caveats in West Malaysia* [1983] 1 MLJ xl @ l, li & lii.)
>
> In my opinion the plaintiff is the holder of the lien within the meaning s. 218(2) of the National Land Code.

[15] Thus, the absence of the agreement of the proprietor for the creation of the lien was not found to be material in the above-mentioned case. In respect of the intention to create a lien, Malik Ishak JCA said as follows at the Court of Appeal in *Perwira Affin Bank Bhd v. Selangor Properties Sdn Bhd & Ors* [2010] 3 CLJ 45; [2010] 3 MLJ 45:

> We say that an intention to create a lien may be gathered from the fact that the issue document of title to the land is deposited with the lender as a security for the loan and for no other purposes. If authority is required for this simple proposition of the law, the case of *Paramoo v. Zeno Ltd* [1968] 1 LNS 95 FC, a decision of the then Federal Court would suffice. Then there is the case of *Zeno Ltd v. Prefabricated Construction Company (Malaya) Ltd & Anor* [1967] 1 LNS 221, where Raja Azlan Shah J (as His Majesty then was) observed that the intention to create a lien may be inferred from all the relevant circumstances of the case.

[16] In the instant case, as we noted earlier, the deposit of the titles by the appellant was connected to the loan facility granted to PT Eden Capital Malaysia. There is no denial in the affidavit in support of the appellant that the deposit of the titles was related to the loan in question. We are mindful of the averment in the affidavit of the appellant that the deposit of the titles was only for the purpose of the third party charges and not for creation of a lien. However, in our view, the act of depositing the titles in relation to a loan would trigger the operation of ss. 281(1) and 330(1) of the NLC. In *Perwira Habib Bank Malaysia Bhd v. Tin Siang Sdn Bhd & Ors* (*supra*), the proprietor did not intend that the titles be used to register charges and this was stated in the covering letter that enclosed the titles. However, as the titles were deposited with the intention to secure a loan, the court found that lender was entitled to a lien. Similarly, in the instant case, as the intention of the appellant in depositing the titles was undoubtedly to secure the loan in question, even if it was for the purpose of third party charges, the respondent was entitled to a lien.

[17] The appellant also emphasised in the affidavit in support that the third party charges were declared void by the court. We find that to be irrelevant to the issue of the validity of the lien. In the case of *Paramoo v. Zeno* [1968] 1 LNS 95; [1968] 2 MLJ 230, the statutory charge was held to be unenforceable and thus it was argued by the proprietor that the lien is also not valid. The former Federal Court speaking through Suffian FJ said as follows:

> The Land Code makes it quite clear that here a charge (we have no mortgage in the Malay States) is quite distinct from a lien. A charge is born in the manner given in s. 129, and the chargee's rights are as given in the Code. A lien on the other hand is born in the manner given in s. 134 and the lienholder's rights are given in the same section.
>
> Here a lien is a separate legal – statutory – lien. It has an independent existence apart from a charge. So if a charge is avoided for non-compliance with some law or other, the lien (not being ancillary to it) is not avoided also, provided of course it complies with the law.

[18] Although, the above-mentioned case dealt with the provisions of the F.M.S. Land Code (F.M.S. Cap. 142), as the said provisions are in respect of the creation of a statutory lien, we see no reason why the said case should not apply to a lien under the NLC.

Prohibition In Respect Of "Malay holding"

[19] This is the second main issue in respect of the appeal against the refusal of the High Court to nullify the lien holder's caveats. Section 10 of the Malay Reservations Enactment (F.M.S. Cap. 142) (As applicable to Negeri Sembilan) reads as follows:

> Section 10
>
> Restrictions as to caveats based on lien by deposit of title
>
> No lien by deposit of the issue document of title for any Malay holding as security for a debt shall be capable of being created in favour of any person, and no caveat in support of any such lien by deposit shall be capable of registration in any Land Office or Registry of Titles.

[20] There is no dispute that all the lands in questions are "Malay holding" under the Enactment. If read in isolation, the said s. 10 appears to prohibit a lien from being created over any "Malay holding" land. However, s. 17 provides an exception. It reads as follows:

> Section 17
>
> Lands may be charged or leased to Government and charged to certain Co-operative Societies.
>
> (1) **Notwithstanding any of the provisions contained in this Enactment** the proprietor of any Malay holding may
>
> (a) charge such holding to the Menteri Besar or to any co-operative society registered under the Co-operative Societies Enactment [Cap. 97] and approved by the Menteri Besar either generally or for the purposes of any particular case or to any person specified in the Second Schedule and may in favour of the Menteri Besar or of any such co-operative society or of any such person create, subject to the provisions of s. 134 of the Land Code [Cap. 138], a lien by deposit of the issue document of title for such holding; or
>
> (b) lease such holding to the Menteri Besar.
>
> [Am. Ord. 25/54] (2)
>
> The Ruler of the State in Council may from time to time by order published in the *Gazette* add to, delete from or amend the second schedule. (emphasis added)

[21] The opening words of s. 17 are "Notwithstanding any of the provisions in this Enactment". Thus, s. 17 in clear language has overridden the prohibition in s. 10 against the creations of lien over "Malay holding" for entities that are listed in the Second Schedule. There is no dispute that the respondent was listed in the Second Schedule (as applicable to Negeri Sembilan) at the time that the lienholder's caveats were entered.

[22] Counsel for the appellant, however, has attempted to draw a distinction between a lienholder's caveat and lien. He submitted that s. 17 only permits the creation of a statutory lien over Malay holding by entities who are listed in the Second Schedule but it does not permit the entry of a lienholder's caveat.

[23] To recapitulate, s. 10 says that no lien can be created and no caveat to support it can be entered in respect of Malay holding. It is true that although s. 17 exempts creation of lien by entities listed in the Second Schedule, it does not specifically mention exemption for a lienholder's caveat. However, in our view that does not mean that the entry of lienholder's caveat to support a lien as done in this case by the respondent is unlawful. Section 10 and 17 should be read together with the relevant provisions of the NLC relating to the creation of a lien. Otherwise, the intention of the Legislature in permitting the creation of lien by specified entities over Malay holding would be frustrated. A statutory lien is created only upon the entry of a lienholder's caveat under s. 281(1)(b) of the NLC. And s. 330(1) of the NLC as we noted earlier entitles a person with whom a title is deposited for security to apply to enter a lienholder's caveat under s. 281. It follows that since s. 17 permits creation of a statutory lien by the entities listed under Second Schedule, the entry of a lienholder's caveat to create the said lien is also not barred. The exemption provided in s. 17 would be completely unworkable if the prohibition against the entry of a lien holder's caveat in s. 10 is read independently. In our view, the prohibition in s. 10 against the entry of a caveat is only ancillary to the prohibition against the creation of a lien which is the primary object of the exemption. It is not a separate prohibition. For the above reasons, we find no merit in the argument that s. 17 does not apply to a lien holder's caveat. A lien holder's caveat is part and parcel of a statutory lien under the NLC.

[24] The final point raised by counsel for the appellant is that s. 17 is inapplicable to the facts of this case for this reason. He submitted that s. 17 permits the creation of a lien over Malay holding only if a charge also subsisted. In the instant case as the statutory charges were declared void, he argued that s. 17 cannot be invoked. In our opinion, this argument lacks merit for the following reason. Citing eminent authorities, we stated earlier that a "lien" is separate and distinct from a "charge". Section 17 gives recognition to this distinction. It is a long provision but a careful reading would reveal that it is in two parts. The first part refers to a "charge" and the second part refers to a "lien". The second part begins with the words "and may" which suggest that the two parts must be read disjunctively. It refers to the creation of lien. For ease reference, we repeat the second part below:

> ... **and may** in favour of the Menteri Besar or of any such co-operative society or of any such person create, subject to the provisions of s. 134 of the Land Code [Cap. 138], a lien by deposit of the issue document of title for such holding; or (emphasis added)

[25] In the premises, there is no merit in the argument of the appellant that the lien over the lands was illegal by virtue of s. 10 of the Malay Reservations Enactment (F.M.S. Cap. 142) (as applicable to Negeri Sembilan).

[26] For all the above reasons, we are of the view that the appeal against the dismissal of the originating summons to nullify the lien should be dismissed.

Appeal Against The Order For Sale

[27] In opposing the respondent's originating summons for an order for sale of the lands in question, the appellant canvassed the same issues that we addressed earlier in the appeal against the dismissal of the originating summons to nullify the liens in question. Since we found that all the said issues are without merit, it follows that the appeal against the order for sale granted by High Court sitting in Kuala Lumpur must also be dismissed.

[28] In conclusion, we dismissed both appeals with costs of RM10,000 each in favour of the respondent which shall be subject to payment of allocator.